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 9

PUBLIC REDACTED VERSION

10	UNITED STATES DISTRICT COURT	
11	NORTHERN DISTRICT OF CALIFORNIA	
12	SAN JOSE DIVISION	
13	VERIGY US, INC, a Delaware Corporation,	Case No. C07 04330 RMW (HRL)
14	Plaintiff,	OBJECTIONS TO DEFENDANTS' EVIDENCE IN SUPPORT OF SUR-REPLY TO ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION
15	vs.	Date: December 14, 2007 Time: 9:00 a.m. Place: Courtroom 6 Judge: Hon. Ronald M. Whyte
16	ROMI OMAR MAYDER, an individual; WESLEY MAYDER, an individual; SILICON	
17	TEST SYSTEMS, INC., a California Corporation;	
18	and SILICON TEST SOLUTIONS, LLC, a California Limited Liability Corporation, inclusive,	
19	Defendants.	Complaint Filed: August 22, 2007 Trial Date: None Set
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24	HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY	
25	DOCUMENT SUBMITTED UNDER SEAL	
26	PUBLIC REDACTED VERSION	
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1 Plaintiff Verigy US, Inc., ("Verigy") hereby objects to and moves to strike the following
2 evidence submitted by Defendants in support of their sur-reply in opposition to Verigy's
3 application for an order to show cause re: preliminary injunction, now set for hearing on
4 December 14, 2007.

5 **A. Supplemental Declaration of Romi Omar Mayder ("Mayder Declaration")**

6 **OBJECTION NO. 1:**

7 Verigy objects to and moves to strike Paragraph 3 of the Mayder Declaration which states:
8 [REDACTED]
9 [REDACTED]

10 **Grounds for Objection:**

11 Verigy objects to and moves to strike the paragraph because it is made in violation of Civil
12 L.R. 7-5(b) which provides that a "declaration may only contain facts, must conform as much as
13 possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any
14 statement made on information and belief must state the basis therefore. An affidavit or
15 declaration not in compliance with this rule may be stricken in whole or in part." Verigy further
16 objects to the statement because it constitutes opinion testimony, does not satisfy the requirements
17 of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th Cir. 2000).

18 **OBJECTION NO. 2:**

19 Verigy objects to and moves to strike Paragraph 5 of the Mayder Declaration which states:
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 **Grounds for Objection:**

25 Verigy objects to and moves to strike the paragraph because it is made in violation of Civil
26 L.R. 7-5(b) which provides that a "declaration may only contain facts, must conform as much as
27 possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any
28 statement made on information and belief must state the basis therefore. An affidavit or

1 declaration not in compliance with this rule may be stricken in whole or in part.” Verigty further
 2 objects to the statement because it constitutes opinion testimony, does not satisfy the requirements
 3 of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th Cir. 2000).

4 **OBJECTION NO. 3:**

5 Verigty objects to and moves to strike Paragraph 6 of the Mayder Declaration which states:
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]

10 **Grounds for Objection:**

11 Verigty objects to and moves to strike the paragraph because it is made in violation of Civil
 12 L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as
 13 possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any
 14 statement made on information and belief must state the basis therefore. An affidavit or
 15 declaration not in compliance with this rule may be stricken in whole or in part.” Verigty further
 16 objects to the statement because it constitutes opinion testimony, does not satisfy the requirements
 17 of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th Cir. 2000).

18 **OBJECTION NO. 4:**

19 Verigty objects to and moves to strike the following portions of Paragraph 7 of the Mayder
 20 Declaration, and Exhibit B mentioned therein, which state:
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]

25 **Grounds for Objection:**

26 Verigty objects to the statements because there is no foundation for Mayder’s statements
 27 about Navigant’s work, its findings, or the creation of or basis for Exhibit B. Declarations in
 28 support of a motion must be made by a witness having personal knowledge of the facts stated

1 therein. F.R.C.P. 56(e); *see* Civil L.R. 7-5(b). It is insufficient for a witness simply to state that
 2 he or she has personal knowledge of the facts stated. Rather, the declaration must contain facts
 3 showing the declarant's connection with the matters stated therein, establishing the source of his
 4 or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir.
 5 1999). Verigay further objects to the statements because they constitute opinion testimony, do not
 6 satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237,
 7 1251 (9th Cir. 2000). Verigay further objects to the statements because they are speculative and
 8 should be excluded pursuant to F.R.E. 403 (exclusion of relevant evidence based on grounds of
 9 prejudice, confusion or waste of time).

10 Verigay also objects to and moves to strike the document attached as Exhibit B because it
 11 has not been properly authenticated. Documentary evidence must be authenticated, usually by
 12 declaration by someone with personal knowledge of the document's genuineness and execution.
 13 *See, Hal Roach Studios, Inc. v. Richard Feiner & Co Inc.*, 896 F2d 1542, 1550-1551 (9th Cir.
 14 1989). A writing is not authenticated simply by attaching it to an affidavit. *Beyenne v. Coleman
 15 Security Services, Inc.*, 854 F2d 1179, 1182 (9th Cir. 1988). Here, there is no showing that Mayder
 16 has personal knowledge of the genuineness of the document or of the nature of its contents.

17 Mayder has not demonstrated his personal knowledge about Navigant's work and is
 18 therefore incompetent to testify about Exhibit B or characterize what it states or purportedly
 19 "confirms."

20 **OBJECTION NO. 5:**

21 Verigay objects to and moves to strike the following portion of Paragraph 7 of the Mayder
 22 Declaration which states:
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]

27 **Grounds for Objection:**

28 Verigay objects to the statement because it constitutes opinion testimony, does not satisfy

1 the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251
2 (9th Cir. 2000). Verigy further objects to the statements because they are speculative and should
3 be excluded pursuant to F.R.E. 403 (exclusion of relevant evidence based on grounds of prejudice,
4 confusion or waste of time). Verigy further objects to the statements because they are contradicted
5 by the terms of the ARCIPD itself, which does not require Mayder to "destroy any confidential
6 information," but rather "[u]pon termination of [his] employment with Verigy. . . to *return* all
7 Verigy property to Verigy." (Emphasis added) (See Mayder Declaration, Exhibit C, Section 8.)

OBJECTION NO. 6:

9 Verigy objects to and moves to strike portions of Paragraph 9 of the Mayder Declaration
10 which state: [REDACTED]

A horizontal bar chart showing the percentage of individuals with at least one symptom across 17 age groups. The y-axis lists ages from 11 to 17. Each bar is black with a yellow vertical tick at the end.

Age	Percentage (approx.)
11	95
12	90
13	98
14	85
15	95
16	90
17	50

18 || Grounds for Objection:

19 Verigy objects to and moves to strike the statements because they are made in violation of
20 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
21 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
22 Any statement made on information and belief must state the basis therefore. An affidavit or
23 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further
24 objects to the statements because they constitute opinion testimony, does not satisfy the
25 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th
26 Cir. 2000). Verigy further objects to the statements because they are speculative and should be
27 excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice,
28 confusion or waste of time).

1 Mayder includes impermissible argument in the declaration and contradicts the plain
2 language of Exhibit G which is an e-mail between **other** parties and which indicates that it is
3 [REDACTED]
4 [REDACTED]

5 **OBJECTION NO. 7:**

6 Verigy objects to and moves to strike the following portion of Paragraph 11 (p. 4, lines 11-
7 13) of the Mayder Declaration which states:
8 [REDACTED]
9 [REDACTED]

10 **Grounds for Objection:**

11 Verigy objects to the statement because there is no showing that Mayder has personal
12 knowledge for the state of mind of Touchdown's Board of Directors. Declarations in support of a
13 motion must be made by a witness having personal knowledge of the facts stated therein. FRCP
14 56(e), *see Civil L.R. 7-5(b)*. The declaration itself must contain facts showing the declarant's
15 connection with the matters stated therein, establishing the source of his or her information.
16 F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Verigy further
17 objects to the statement because it constitutes opinion testimony, does not satisfy the requirements
18 of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th Cir. 2000).
19 Verigy further objects to the statement because it is speculative and should be excluded pursuant
20 to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of
21 time).

22 **OBJECTION NO. 8:**

23 Verigy objects to and moves to strike the following portion of Paragraph 11 (p. 4, lines 16-
24 19) of the Mayder Declaration which states:
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

Grounds for Objection:

Verigy objects to the statement in the last quoted sentence because, contrary to Mayder's assertion, the e-mail communications were subject to a non-disclosure agreement between Honeywell and Agilent (Verigy's predecessor-in-interest) which had an effective date of April 22, 2006. (See Declaration of Michael W. Stebbins in Support of Evidentiary Objections, etc. ["Stebbins Decl."] at Ex. 2 [Agilent Technologies Confidential Disclosure Agreement, April 22, 2006, labeled VER02470-VER02471].)

OBJECTION NO. 9:

Verigy objects to and moves to strike the following portions of Paragraph 24 of the Mayder Declaration which state: [REDACTED]

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Verigy objects to and moves to strike the statements because they are made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further objects to the statements because they are speculative and should be excluded pursuant to F.R.E. 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of time). Verigy further objects to the first sentence quoted as impermissible hearsay not falling within any exception. F.R.E. 802, 803.

There is no admissible evidence that Mr. Pochowski “assured” Mayder that he would sign the operating agreement. Mayder further mischaracterizes Exhibit L to argue that Mr. Pochowski “planned to sign” the document; however, the e-mail from Mr. Pochowski states only: “Do you have an electronic copy of the document that I can email to the attorney.” (See Mayder Declaration, Exhibit L, p. 2, top of the page.)

OBJECTION NO. 10:

Verigty objects to and moves to strike Paragraph 30 of the Mayder Declaration which states:

[REDACTED]

Term	Percentage
GMOs	100%
Organic	100%
Natural	100%
Artificial	100%
Organic	100%
Natural	100%
Artificial	100%
Organic	100%
Natural	100%
Artificial	100%
Organic	~85%

Grounds for Objection:

Verigyi objects to and moves to strike the statements because they are made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” Mayder’s statements are impermissible argument.

Verigy further objects to the statements because they contradict Mayder's deposition testimony regarding the lab notebook. *See, Cleveland v. Policy Management Systems Corp.* (1999) 526 U.S. 795, 806 (party cannot create an issue of fact by submitting declaration contradicting his own deposition testimony); *Block v. City of Los Angeles* (9th Cir. 2001) 253 F.3d 410, 419, fn. 2. When asked about what is in the lab notebook, Mayder stated that it [REDACTED] [REDACTED]. (See Stebbins Decl., Ex. 1 [Mayder Depo. Transcript] at 35:15-36:24.) He also testified that [REDACTED]. (*Id.* at 120:19-24). He also testified that his first contact with [REDACTED] [REDACTED] (*Id.* at 115:25-117:19.) When asked about the circumstances surrounding [REDACTED], Mayder initially said that he had [REDACTED]

1 [REDACTED] (*Id.* at 126:22-
 2 131:2; 133:14-134:23.) He stated he believed [REDACTED]
 3 [REDACTED]
 4 [REDACTED] (*Id.* at 134:11-23.) Mayder finally admitted that he could not
 5 say exactly when he [REDACTED] (*Id.* at 131:3-18.) But he admitted he
 6 contacted [REDACTED]
 7 [REDACTED] (*Id.* at 147:18-148:16.)

8 Mayder attempted to justify his fraud by stating in deposition that [REDACTED]
 9 [REDACTED]
 10 [REDACTED] (*Id.* at 136:9-
 11 137:7.) He tried to justify this further by stating if [REDACTED]
 12 [REDACTED] (*Id.* at
 13 137:8-13.) Mayder's most recent declaration states that the [REDACTED]
 14 [REDACTED] (Mayder Decl. at ¶¶26-27). Accordingly, the statements in
 15 that declaration are inconsistent with his prior deposition testimony that indicated creation of the
 16 notebook began much earlier in time and should be stricken.

17 **OBJECTION NO. 11:**

18 Verigy objects to and moves to strike portions of Paragraph 33 of the Mayder Declaration
 19 which state: [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]

25 **Grounds for Objection:**

26 Verigy objects to and moves to strike the statements because they are made in violation of
 27 Civil L.R. 7-5(b) which provides that a "declaration may only contain facts, must conform as
 28 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.

1 Any statement made on information and belief must state the basis therefore. An affidavit or
 2 declaration not in compliance with this rule may be stricken in whole or in part.” Verigay further
 3 objects to the statements because they are speculative and should be excluded pursuant to F.R.E
 4 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of time).

5 Mayder’s statements are impermissible argument and mischaracterize the fact (as set forth
 6 in Morton Supp. Decl., Ex. 14) that he wrote a letter to the [REDACTED] that he had not
 7 actually stopped working at Verigay, but that he was merely “on leave.”
 8

9 **B. Declaration of Kevin M. Pasquinelli In Support Of Defendants’ Sur-Reply For Order
 10 To Show Cause Re Preliminary Injunction (“Pasquinelli Declaration”)**

11 **OBJECTION NO. 12:**

12 Verigay objects to and moves to strike Paragraph 3 of the Pasquinelli Declaration (pp. 3:1-
 13 6:9 (Text omitted, but attached as Stebbins Decl., Exhibit 3):

14 **Grounds for Objection:**

15 Verigay objects to and moves to strike the paragraph because it is made in violation of Civil
 16 L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as
 17 possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any
 18 statement made on information and belief must state the basis therefore. An affidavit or
 19 declaration not in compliance with this rule may be stricken in whole or in part.” Verigay further
 20 objects to the paragraph because it constitutes opinion testimony, does not satisfy the requirements
 21 of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th Cir. 2000).
 22 Verigay further objects to the paragraph as lacking the proper foundation. F.R.E. 602; *see, United*
 23 *States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Verigay further objects to the statement
 24 because it is speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant
 25 evidence based on grounds of prejudice, confusion or waste of time).

26 The paragraph consists of impermissible argument in violation of the above rules, as well
 27 as the agreed upon 17 page limit for Defendants’ brief. (*See also*, Stebbins Decl., Ex. 4 [REDACTED]
 28 [REDACTED]

1

2 [REDACTED])

3 **C. Declaration of Ben Francois In Support Of Defendants' Sur-Reply For Order To
4 Show Cause Re Preliminary Injunction ("Francois Declaration")**5 **OBJECTION NO. 13:**6 Verigy objects to and moves to strike Paragraph 3 of the Francois Declaration which states
7 in relevant part: [REDACTED]8 **Grounds for the Objection**9 Verigy objects to and moves to strike the statements because they are made in violation of
10 Civil L.R. 7-5(b) which provides that a "declaration may only contain facts, must conform as
11 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
12 Any statement made on information and belief must state the basis therefore. An affidavit or
13 declaration not in compliance with this rule may be stricken in whole or in part." Verigy further
14 objects to the statements allegedly made by Mayder as impermissible hearsay not falling within
15 any exception. F.R.E. 802, 803.16 **OBJECTION NO. 14:**17 Verigy objects to and moves to strike Paragraph 4 of the Francois Declaration which states
18 in relevant part: [REDACTED]
19 [REDACTED]20 **Grounds for the Objection**21 Verigy objects to and moves to strike the statements because they are made in violation of
22 Civil L.R. 7-5(b) which provides that a "declaration may only contain facts, must conform as
23 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
24 Any statement made on information and belief must state the basis therefore. An affidavit or
25 declaration not in compliance with this rule may be stricken in whole or in part." Verigy further
26 objects to the statements allegedly made by Mayder as impermissible hearsay not falling within
27 any exception. F.R.E. 802, 803.

28

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OBJECTION NO. 15:

3 Verigy objects to and moves to strike Paragraph 6 of the Francois Declaration which states
4 in relevant part: [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] (Emphasis in original.)

9 | Grounds for the Objection

10 Verigy objects to and moves to strike the statements because they are made in violation of
11 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
12 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
13 Any statement made on information and belief must state the basis therefore. An affidavit or
14 declaration not in compliance with this rule may be stricken in whole or in part.”

15 Francois is not stating fact, but rather trying to argue that the clear language of the e-mail
16 does not mean what it says.

18 D. Declaration of Dick Weber In Support Of Defendants' Sur-Reply For Order To
19 Show Cause Re Preliminary Injunction ("Weber Declaration")

OBJECTION NO. 16:

Verigy objects to and moves to strike the Weber Declaration in its entirety.

22 || Grounds for Objection:

Verigy object to and moves to strike the Weber Declaration in its entirety because

24

Term	Percentage
25	100%
26	~95%
27	~90%
28	~85%

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] Verigy further objects to the statements because
6 they are speculative and should be excluded pursuant to F.R.E. 403 (exclusion of relevant
7 evidence based on grounds of prejudice, confusion or waste of time).
8

9
10 Dated: December 13, 2007 BERGESON, LLP

11
12 By: _____ /s/
13 Michael W. Stebbins

14 Attorneys for Plaintiff
15 VERIGY US, INC.
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